

REMARKS

The Examiner is thanked for the clarity and conciseness of the Office Action, and for the citation of references, which have been studied with interest and care.

This Amendment is in response to the Office Action mailed March 6, 2003. In the Office Action claims 1-18 were rejected.

Applicant has cancelled claims 2, 10, and 12 and has amended claims 1, 3-7, 9, 11, and 13-17. Accordingly, claims 1, 3-9, 11 and 13-18 are pending. Reconsideration of the rejections set forth in the Office Action is respectfully requested in view of the amendments and the following remarks.

I. REJECTION UNDER 35 U.S.C. § 102

In the Office Action, claims 1-3, 9, and 11-13 were rejected under 35 U.S.C. §102 as being anticipated by U.S. Patent No. 6,504,849 issued to Wang.

Anticipation requires that each and every element as set forth in the claim be found, either expressly or inherently described, in a single prior art reference. MPEP §2131. Also, as the MPEP states, "[t]he identical invention must be shown in as complete detail as is contained in the...claim." MPEP §2131 (emphasis added).

Applicant respectfully submits that amended independent claims 1, 9, and 11, are not anticipated by Wang, because the elements of these claims are not disclosed therein. Moreover, the invention disclosed in Wang is not the identical invention as recited by Applicant's amended independent claims 1, 9, and 11. Therefore, anticipation is not present, and Applicant respectfully requests that this ground for rejection be removed.

Amended independent claims 1, 9, and 11 all basically recite, in combination with other elements using *a probe to negotiate a common mode of communication* between two nodes by:

establishing a first communication path between the probe and a first node, establishing a second communication path between the probe and a second node, and *establishing a third communication path through the probe*, in which the third communication path couples the first and second communication paths by establishing a point-to-point link between the first and second nodes *in order to provide a negotiated common mode of operation* between the first node and second node, wherein *the probe includes a bypass mode in which data bypasses the probe and a pass through mode in which data is monitored by the probe*.

On the other hand, Wang does not teach, suggest, or render obvious the use of *a probe to negotiate a common mode of communication* between two nodes by establishing a third communication path *through the probe* that couples first and second communication paths by establishing a point-to-point link between first and second nodes *in order to provide a negotiated common mode of operation* between the first node and second node, wherein *the probe includes a bypass mode in which data bypasses the probe and a pass through mode in which data is monitored by the probe*.

In contrast, Wang does not teach, suggest or render obvious *the use of a probe to negotiate a common mode of communication between two nodes*. In fact, Wang does not disclose a probe at all. Moreover, Wang does not teach, suggest or render obvious *a probe to negotiate a common mode of operation between two nodes that further includes a bypass mode in which data bypasses the probe and a pass through mode in which data is monitored by the probe*.

Applicant would like to note that, in rejecting Applicant's original independent claims and some of Applicant's dependent claims, the Office Action cites the background section of Wang, which describes a conventional shared media network, and particularly describes the use of hubs in LANs and the use of Auto-Negotiation in hub-based LANs (but not the use of probes). In contrast, the embodiments of Applicant's claimed invention allow for a probe to be utilized in

a network that uses Auto-Negotiation techniques to remedy deficiencies in the prior art, because, as stated in Applicant's patent application: "In the prior art, the nodes are not able to so negotiate when a network probe is inserted therebetween." (Applicant's patent application, page 11, lines 19-20).

In view of the foregoing, Applicant respectfully submits that Wang does not teach, suggest, or render obvious the elements of Applicant's independent claims, nor does Wang teach the identical invention shown in as complete detail as is contained in Applicant's amended independent claims 1, 9, and 11, and thus anticipation is not present. Therefore, withdrawal of this ground for rejection is respectfully submitted. With respect to the dependent claims, Applicant respectfully submits that these claims are allowable for being dependent upon allowable independent claims.

## CONCLUSION

In view of the remarks made above, it is respectfully submitted that pending claims 1, 3-9, 11, and 13-18, define the subject invention over the prior art of record. Thus, Applicant respectfully submits that all the pending claims are in condition for allowance, and such action is earnestly solicited at the earliest possible date. The Examiner is respectfully requested to contact the undersigned by telephone if it is believed that such contact would further the examination of the present application. To the extent necessary, a petition for an extension of time under 37 C.F.R. is hereby made. Please charge any shortage in fees in connection with the filing of this paper, including extension of time fees, to Deposit Account 02-2666 and please credit any excess fees to such account.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP



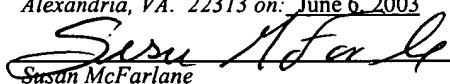
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Dated: June 6, 2003

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### CERTIFICATE OF MAILING

*I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, Alexandria, VA. 22313 on: June 6, 2003*



*Susan McFarlane* 06/06/03  
Date